

Public Consultation
Tax Appeals Commission
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Ref:DF/IC

Cc to: procedures@taxappeals.ie

Consultation on the Tax Appeals Commission

Dear Sir/ Madam

Ernst and Young, as advisors to many of Ireland's leading indigenous and multinational companies, welcomes the consultation paper on the Tax Appeals Commission (TAC) and the opportunity to contribute to an enhanced tax appeal system.

Background observations

Earlier this year the TAC published its 2016 annual report. A number of observations on that report raises questions as to whether or not the tax appeal system is fit for purpose.

Based on data in the report, it would appear that appeals are being lodged at a rate of about 20 per week with only 10 per week being resolved, either through settlement, determination, withdrawal or otherwise disposed of. At the beginning of 2016 there were 425 cases with the TAC. This had grown to 876 cases at the end of last year while 2,731 legacy cases still awaited the appointment of a temporary appeal commissioner. According to the Irish Tax Institute the tax in dispute amounts to approximately €1.5 billion. Even if an element of this is estimated, it is a large sum to be tied up in an appeal system. Thus, even though the TAC was only a year old, a backlog of appeals is already evident from the 2016 annual report, a situation that likely will have worsened in 2017. An increasing case backlog creates a significant amount of uncertainty for business and the exchequer.

We also observe that of the 448 appeals for which TAC action is no longer required, only 41 of these or less than 10% resulted in formal determinations. Determinations in 29 of the cases had been published at the end of 2016, with the number of published determinations as at 27 September 2017 now standing at 38. This demonstrates that a significant amount of appeals will not require determination by the TAC. They might be settled, withdrawn or otherwise disposed of by the TAC. The 2016 annual report does not describe how cases other than those actually determined are 'disposed of'. Understanding whether or not some tax appeals would be better served by a cost-effective alternative dispute resolution mechanism should be a key output of this consultation process.

The published determinations do not indicate the amounts at issue in all cases. However, of the 38 published determinations, a significant number do not appear to involve large sums, for example the 8 Vehicle Registration Tax (VRT) appeals. One determination re VAT concerned the sum of €214. Neither do many of the cases appear to involve complex issues of precedent value. For example a recurring feature are appeals (rejected) re out-of-time tax repayments where the principle is now well-established. Some of these cases may also be suitable for an alternative form of dispute resolution freeing up the Appeal Commissioners for more complex cases where there are much larger sums of money at stake.

Our views on some matters raised in the consultation paper are outlined below.

Burden of responsibility/ Costs

The current tax appeal system represents a significant cost undertaking for businesses. Typically the issues in these appeals are more complex and involve larger sums than appeals involving self-representation by taxpayers.

As regards costs, it is our experience that the Revenue Commissioners will almost always seek to engage legal counsel which taxpayers will feel obliged to replicate. The inability to seek a rehearing of a tax appeal before a Circuit Court Judge has upped the stakes considerably from a taxpayer's perspective.

In our view the requirement for a statement of case from taxpayers before any date for hearing has been set is not only inequitable but also contributes to additional costs at a prematurely early stage in the appeal process. The taxpayer does not receive a copy of the Revenue's statement of case (if it is even requested) before being requested to provide this. It has the appearance of duplicating to some degree the information given by a taxpayer in its notice of appeal and can require legal assistance. It is significant that the UK tax appeal process recognises that a taxpayer will already have supplied the grounds of appeal and thus statements of case are required of HMRC in order to ensure that the matters in dispute are focused and presented to a taxpayer for consideration. If a statement of case is to be requested of a taxpayer, we believe a statement of case should first be requested of the Revenue Commissioners and supplied to the taxpayer given that it is the Revenue Commissioners that will have disagreed at the outset with a position taken by a taxpayer in a return. It is anomalous that the TAC may dismiss an appeal where a party has failed to comply with a direction for a statement of case even if that party is the Revenue Commissioners.

In relation to the 2,731 'legacy' appeals, we believe that significant costs could be incurred in dealing with some of these appeals. Some of these appeals relate to assessments many years old (a decade or more in some cases) for which there had been neither correspondence nor a Revenue intention of listing an appeal in the interim period. We believe the transfer of many 'cold cases' to the TAC is questionable as the assessment and the basis for the position adopted by Revenue and the taxpayer

may be long forgotten. In such instances, a request for a statement of case from the Revenue in advance of any request of a taxpayer would be warranted to justify the cost/ benefit of the appeal.

We would be supportive of more 'class action' approaches especially with respect to the 'legacy' appeals as this has the potential to facilitate both cost sharing and helping to clear the backlog. However, it would be important to ensure that cases are genuinely similar to each other.

Expedition of the process

It is evident that many of the appeals for which determinations have been published concern non-complex matters of little precedential value or matters where the sums involved are not significant. We would support a proposal for the creation of an alternative dispute resolution (ADR) procedure that increases the time available for the Appeal Commissioners to determine more complex appeals. In this regard we note that an ADR facility exists in the UK alongside a separate statutory review procedure. Were an optional ADR facility to be made available it could offer a low-cost alternative to proceeding to a full TAC appeal whilst also helping to reduce the backlog of cases currently with the TAC.

Deadlines

The time limit for appealing a notice of assessment is generally 30 days from the date of a notice of assessment. This leaves relatively little time to liaise with clients and document the full grounds for appeal. In some instances the legal basis for Revenue's assessment may not be clear. We would welcome clearer guidance from the TAC as to the level of detail required at this stage to reduce the level of anxiety amongst clients that fear omitting key details.

Section 949AJ provides that as soon as practicable after completion of adjudication of an appeal, the Appeal Commissioners shall determine it. However, no time line is specified for adjudicating and hence determining an appeal. A reply to a recent Parliamentary Question revealed that the average time is not available. However, we are aware of cases where a significant amount of time elapsed after hearings without a determination. This creates an unnecessary level of anxiety and costs especially as interest may be accruing throughout this period at penal rates.

Yours sincerely



Ernst & Young